

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-19-0013
RULES 5.4, 7.2, AND 7.4, RULES)
OF CRIMINAL PROCEDURE)
)
) **FILED 08/27/2019**
)
)
_____)

**ORDER
AMENDING RULES 5.4, 7.2, AND 7.4, RULES OF CRIMINAL PROCEDURE**

A petition having been filed proposing to amend Rules 5.4, 7.2, and 7.4, Rules of Criminal Procedure, and comments having been received, upon consideration,

IT IS ORDERED that Rules 5.4, 7.2, and 7.4, Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective January 1, 2020.

DATED this 27th day of August, 2019.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

Rule 28 Distribution

Elizabeth B Ortiz

William G Montgomery

Mark C Faull

Lisa M Panahi

David K Byers

ATTACHMENT*

(*Additions to text are indicated by underscoring; deletions by ~~strikeouts~~.)

RULE 5.4

(a) Holding a Defendant to Answer. If a magistrate finds that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate must file a written order holding the defendant to answer for the offense before the superior court. Upon request, the magistrate may reconsider the conditions of release. Upon the State's request, this rule's requirements are satisfied if a probable cause or proof evident or presumption great finding was made at a bail eligibility hearing under Rule 7.2(b)(4).

(b) [No Change]

(c) [No Change]

(d) [No Change]

RULE 7.2

(a) [No Change]

(b) Before Conviction: Defendants Charged with an Offense Not Eligible for Bail

(1) [No Change]

(2) [No Change]

(3) [No Change]

(4) *Bail Eligibility Hearing*

(A) [No Change]

(B) Timing. If the State makes an oral motion under A.R.S. § 13-3961(E), the court must hold this hearing within 24 hours of the initial appearance, subject to continuances as provided in A.R.S. § 13-3961. If this motion is not made, the hearing must be held as soon as practicable, but no later than 7 days after the initial appearance unless the detained defendant moves for a continuance or the court finds that extraordinary circumstances exist and delay is indispensable to the interests of justice. For this purpose, extraordinary circumstances are events that would prohibit the hearing from occurring and that are beyond the prosecutor's control. Upon a finding of extraordinary circumstances, the court may continue the hearing once and for no more than 3 calendar days.

(C) Determination of Probable Cause and Release Conditions. If the court does not find the proof evident or the presumption great under (b)(1) or (b)(2)(A) and there has been no prior finding of probable cause for the charges by a grand jury or through a preliminary hearing, the court must determine whether there is probable cause to believe that an offense was committed and that the defendant committed it.

(i) Probable Cause Found. If the court finds probable cause, or probable

cause for the charges was previously determined by a grand jury or through a preliminary hearing, the court must determine release conditions under (a).

(ii) *No Probable Cause Found.* Unless there was a finding of probable cause for the charges by a grand jury or through a preliminary hearing, if the court does not find probable cause, the defendant must be released from custody. The parties may stipulate before the bail eligibility hearing that the probable cause determination at the hearing satisfies the requirements of Rule 5. If the parties so stipulate and the court does not find probable cause, the court must dismiss the complaint and discharge the defendant. If the parties have not so stipulated, Upon the State's request, the court must schedule a preliminary hearing as provided in Rule 5.1(a). If the state does not request a preliminary hearing, the court must dismiss the complaint and discharge the defendant, unless probable cause for the charges was previously determined by a grand jury or through a preliminary hearing.

(D) *Effect of Findings.* If the court finds the proof is evident or the presumption great or finds probable cause, upon the State's request, the court will hold the defendant to answer before the superior court as provided in Rule 5.4(a).

(E) [Renumbered from (D) to (E). No change to text]

(c) [No Change]

(d) [No Change]

RULE 7.4

(a) [No Change]

(b) Bail Eligibility Hearing

(1) [No Change]

(2) [No Change]

(3) *Admissibility.* Evidence is admissible at the hearing only if it is material to whether, and under what conditions, to release the defendant on bail and, ~~subject to the parties' stipulation under Rule 7.2(b)(4)(C),~~ whether probable cause exists to hold the defendant for trial on each charge. Rules or objections calling for the exclusion of evidence are inapplicable at a bail eligibility hearing.

(c) [No Change]

(d) [No Change]

(e) [No Change]

(f) [No Change]

(g) [No Change]